

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

WESTPORT INSURANCE)
CORPORATION,)
)
Plaintiff,)
)
v.)
)
THE HAMILTON WHARTON GROUP,)
INC., WALTER B. TAYLOR,)
individually, et al.)
)
and)
)
INTER-COMMUNITY MEMORIAL)
HOSPITAL OF NEWFANE, INC., et al.,)
)
Defendants.)
_____)

Case No. 10-CV-02188 (RMB)

**WESTPORT INSURANCE CORPORATION'S ANSWER
TO COUNTERCLAIM OF THE DEFENDANTS THE HAMILTON WHARTON
GROUP, INC. AND WALTER B. TAYLOR, INDIVIDUALLY**

Plaintiff, WESTPORT INSURANCE CORPORATION ("Westport"), by and through its undersigned counsel, for its Answer to the Counterclaim of the Defendants THE HAMILTON WHARTON GROUP, INC. and WALTER B. TAYLOR, INDIVIDUALLY (the "HW Defendants"), hereby alleges as follows:

COUNTERCLAIM

133. It is well settled that an insured may recover sums incurred in successfully defending a declaratory judgment action brought by the insurer to avoid its obligation to defend under the policy. See, e.g., U.S. Underwriters Ins. Co. v. Weatherization, Inc., 21 F.Supp.2d 318, 327-28 (S.D.N.Y. 1998) (collecting cases); U.S. Fid. and Guar. Co. v. The N.Y., Susquehanna, and W. Ry. Corp., 716 N.Y.S.2d 181, 181-82 (4th Dep't 2000) ("By commencing this action, plaintiff has 'cast [defendant] in a defensive posture by the legal steps [plaintiff has taken] in an effort to free itself from its policy obligations' [*sic*] and thus defendant is entitled to

recover from plaintiff the attorney's fees and costs incurred in defending this action.") (citing Mighty Midgets, Inc. v. Centennial Ins. Co., 389 N.E.2d 1080 (N.Y. 1979)).

Answer: Paragraph 133 contains conclusions of law to which no response is required. To the extent a response is deemed required, Westport denies each and every allegation contained in Paragraph 133 and demands strict proof thereof.

134. In connection with the defense of Plaintiff's claims in this action, Defendants have incurred and will incur costs and attorneys' fees.

Answer: Westport lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 134 and on such basis denies same and demands strict proof thereof.

135. As a result, the Plaintiff is obligated to pay Defendants' reasonable legal fees and costs in connection with the claims asserted by the Plaintiff herein.

Answer: Westport denies the allegations contained in Paragraph 135.

AFFIRMATIVE DEFENSES

In further response to the allegations set forth in the HW Defendants' Counterclaim, and without waiving any denials of fact or liability set forth above, Westport hereby sets forth the following Affirmative Defenses:

FIRST AFFIRMATIVE DEFENSE

The HW Defendants' Counterclaim fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The HW Defendants' Counterclaim fails to allege sufficient facts to constitute a cause of action against Westport.

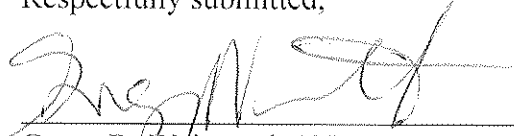
PRAYER FOR RELIEF

WHEREFORE, Plaintiff WESTPORT INSURANCE CORPORATION prays for a judgment in its favor, and against Defendants THE HAMILTON WHARTON GROUP, INC. and WALTER B. TAYLOR, INDIVIDUALLY as follows:

1. For dismissal, without costs and with prejudice, of the HW Defendants' Counterclaim;
2. For a judgment for Westport's costs, including reasonable attorneys fees, incurred herein; and
3. For such other relief as this Court deems equitable and proper.

Dated: New York, New York
February 3, 2011

Respectfully submitted,



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